

# BOULDER CITY COUNCIL PROCEEDINGS

Tuesday, May 4, 2010

## 1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular May 4, 2010 council meeting to order at 6:00p.m.in the council chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian and Morzel.

### A. **PUBLIC SERVICE RECOGNITION WEEK DECLARATION. – 6:02 P.M.**

Mayor Osborne read a declaration honoring public servants and declaring May 3 – 9, 2010 as public service recognition week in the City of Boulder.

### B. **XCEL ENERGY FRANCHISE PRESENTATION. – 6:05 P.M.**

Craig Eicher with Xcel Energy introduced his team members who were present at the meeting and introduced Jay Hermann who would provide the presentation. Mr. Hermann spoke to the various ways that Xcel was incorporating renewable energy into its portfolio and described the ways the corporation had tried to address the City of Boulder's franchise priorities list including reducing Valmont emissions. He noted Xcel is now participating in state mandated programs such as the Clean Air and Clean Jobs act. Paula Connelly spoke to the state caps Xcel faces in terms of purchasing renewable energy. Mr. Hermann expressed that he felt Xcel and the City had made significant strides related to the Franchise agreement. He then listed various benefits to Boulder if the Franchise were to be renewed including energy efficiency rebates, access to customer data and the data pilot program, and the Windsource Commission program. He urged Council to support a franchise renewal agreement going before voters in 2010. Mr. Hermann also commented that Boulder had no restrictions to alternative energy access.

### **Council Questions – 6:20 p.m.**

Council Member Morzel thanked Xcel for its transparency in starting the dialogue with Council.

Deputy Mayor Wilson asked why Xcel still wanted a Franchise as it seemed to be more of a benefit for them than for the City. Mr. Hermann responded that due to the nature of Xcel's investment in a community and the lifespan of its investments it wanted investors to have a sense of certainty.

Council Member Gray asked whether Xcel had responded to the City Manager's decarbonization plan. Xcel responded that it would prefer to complete negotiations and move forward with a ballot issue in the fall and then continuing to work with Boulder on its decarbonization plan. Ms. Gray indicated a formal response would be useful.

Council Member Gray commented that Xcel opposed Amendment 37 6 years ago and asked why it supported it now. Xcel responded that at the time, solar was expensive and a lot has changed including the leadership at Xcel. Council Member Gray requested additional information regarding bloombox.

Paula Connelly explained that the state had put a cap on Xcel that limits what it could spend on renewables.

Deputy Mayor Wilson commented that he was concerned Xcel would walk away without a franchise. Mr. Hermann asked him to look at Xcel's past commitment and the core values of the company. A ballot measure signifies a commitment to a partnership and working together.

Council Member Karakehian commented that it didn't make sense to negotiate after a contract had been signed.

Jay Hermann commented that Xcel had done its best to address the city's priorities and he felt extending the franchise meant extending the impasse.

## 2. **PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE**

1. Neil Fishman asked Council to boycott Arizona due to the immigration law it passed.
2. Erika Blum of Voices of Immigrant Children for Education and Equality also asked Council to boycott Arizona and its new immigration law.
3. Steve Pomerance, member of the decarbonization tech team, commented that there had been franchise issues since 1990 and many cities operate without them. He made various points about how Xcel had been an obstacle to Boulder's energy goals.
4. Seth Brigham expressed that he wanted his three minutes. He read a poem about homelessness.
5. Emily Zisette with Reform Immigration for America asked Council to boycott Arizona and support comprehensive immigration reform.
6. Rob Smoke asked Council to do comprehensive testing on Boulder Reservoir and to please bring it up at the study session on May 11.
7. Ron Forthofer raised concern about criminalizing the homeless as he felt it was a impact from the failing economy. Please reconsider the ordinance or find other solutions. Negotiate with CU or BVSD about using the stadiums.
8. Carolyn Bninski with the Rocky Mountain Peace and Justice Center asked council to designate outdoor spaces for the homeless to sleep. She also asked council to support a ballot initiative to publicly finance campaigns.
9. Terri Sternberg read a poem about homelessness and asked about the possibility of using school gymnasiums for the homeless to sleep.
10. Jim Hartman with the decarbonization tech team commented that there was an incredible opportunity for the City to go as far and as fast as it can. He felt Xcel should join and be an equal partner. Boulder needed to keep its reputation as a world leader in climate change.
11. Jan Morzel raised concern about Crestview East issues including sidewalks, trees and traffic calming.
12. Bud Wilson urged Council to decarbonize Valmont and insist that Xcel walk the talk.
13. Ellen Stark asked who took the public out of public service. She asked council to discontinue the use of pesticides and herbicides on parks. She was dismayed by the court decision on homelessness. She also urged council to support the Crestview residents.
14. Stachia Simons spoke to her personal story of homelessness and wished everyone personal growth.

15. Amy Haywood expressed that the poor are just screwed in our country. She insisted that Xcel put its profits back into the community. She also supported the Arizona boycott.
16. Paul Sheldon with the decarbonization tech team commented that there was no spirit of partnership from Xcel.
17. Jim Morris spoke to the environmental damage done by coal and asked council to boycott the Comanche plant. Xcel only does things when they're pushed.
18. Katherine Clark asked council not to renew the franchise agreement.
19. Diana Best agreed with the previous speakers' comments.
20. Tom Weis thanked council for its hard work. Let the agreement with Xcel expire.
21. Fran Kornfeld expressed that the City had not been innovative or creative with the homeless issue.
22. Joe McDonnell urged Council not to extend the Xcel franchise agreement.

**City Manager Response: - 7:31 p.m.**

- 1) Regarding the Arizona boycott she noted that staff would pursue the issue and see if any business is currently done with any companies based in Arizona.
- 2) Regarding Crestview East, she noted a Weekly Information Packet item went out last month. The negotiations took many months and years and 14 property owners had to agree. Some of the recent suggestions were contrary to good public safety and engineers would not certify.

**City Attorney Response: - 7:33 p.m.**

None.

**City Council Response – 7:35 p.m.**

- 1) Council Member Karakehian asked how many cities operate without a franchise. Berthoud and Fort Collins.
- 2) Council Member Becker asked how hard the May 21 franchise deadline was. The City Manager responded it was not likely an agreement would be reached by then. Staff was focusing on what life would look like without a franchise.
- 3) Council Member Cowles expressed disappointment with Xcel in the lack of progress.
- 4) Council Member Morzel thanked the speakers regarding the Arizona boycott and asked that Council consider a resolution or formal letter later in the meeting under matters. She would like to see staff continue to work on the homeless issue. She commented staff should ensure the North Boulder Subcommunity plan is followed when dealing with Crestview East.
- 5) Mayor Osborne commented that she would like to refer the Arizona issue to the Human Relations Commission. She thanked Xcel for attending.
- 6) Council Member Gray asked for information from Xcel about all of the state and PUC laws that limit Xcel.
- 7) Council Member Cowles indicated he would like to discuss Crestview East in more detail later in the meeting.

3. **CONSENT AGENDA: - 7:55 p.m.**

**A. APPROVAL OF CITY COUNCIL MEETING MINUTES FROM APRIL 6, 2010.**

This item was amended.

- B. **CONSIDERATION OF A MOTION CALLING A SPECIAL MEETING ON TUESDAY, MAY 25, 2010 FOR THE BOULDER VALLEY COMPREHENSIVE PLAN DISCUSSION AND CALLING A SPECIAL MEETING ON SUNDAY AND MONDAY, MAY 16 AND 17 FOR CITY COUNCIL INTERVIEWS AND RELATED EVENTS WITH CITY ATTORNEY CANDIDATES.**
- C. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE APRIL 13, 2010 STUDY SESSION ON BOULDER'S LONG-TERM ENERGY STRATEGY, RENEWABLE ENERGY CREDITS AND THE XCEL FRANCHISE.**
- D. **CONSIDERATION OF A MOTION TO ADOPT AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF BOULDER, COLORADO, OF ITS STORM WATER AND FLOOD MANAGEMENT REVENUE REFUNDING BONDS, SERIES 2010, IN AN AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE CURRENT REFUNDING OF THE CITY'S STORM WATER AND FLOOD MANAGEMENT REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 1998 AND PAYING THE COSTS OF ISSUANCE OF THE SERIES 2010 BONDS; PRESCRIBING THE FORM OF THE SERIES 2010 REFUNDING BONDS AND PROVIDING FOR THE SALE OF SAID SERIES 2010 REFUNDING BONDS; PROVIDING FOR THE PAYMENT AND REDEMPTION OF SAID SERIES 2010 REFUNDING BONDS FROM AND OUT OF THE STORM WATER AND FLOOD MANAGEMENT FEE; PROVIDING OTHER DETAILS AND APPROVING OTHER DOCUMENTS IN CONNECTION WITH SAID SERIES 2010 REFUNDING BONDS; AND DECLARING AN EMERGENCY AND PROVIDING THE EFFECTIVE DATE HEREOF.**

This item was amended.

- E. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7718 ADOPTING SUPPLEMENT NO. 104 WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NO. 7701, AND INCLUDES OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS TO THE BOULDER REVISED CODE, 1981.**
- F. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE APPROVING SUPPLEMENTAL APPROPRIATIONS TO THE 2010 BUDGET.**
- G. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7719 AMENDING SECTION 5-6-10, "CAMPING OR LODGING ON PUBLIC PROPERTY WITHOUT CONSENT," B.R.C. 1981, BY REMOVING THE AUTHORITY OF THE CITY MANAGER TO ISSUE PERMITS FOR CAMPING ON PUBLIC PROPERTY.**
- H. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING THE BOULDER REVISED CODE DEFINITION SECTION FROM "VOICE CONTROL" TO "VOICE AND SIGHT CONTROL."**  
Deputy Mayor Wilson moved, seconded by Morzel to approve consent items 3A through 3H with amendments to items 3A and 3D. The motion carried unanimously 9:0. 7:55 p.m.

4. **CALL- UP CHECK IN:** - None.

## ORDER OF BUSINESS

### 5. PUBLIC HEARINGS:

- A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7716 AMENDING TITLE 6 BY THE ADDITION OF A NEW CHAPTER 6-14, "MEDICAL MARIJUANA," B.R.C. 1981; TERMINATING INTERIM REGULATIONS ADOPTED BY ORDINANCE NO. 7707; ADDING A NEW SECTION 4-20-64, "MEDICAL MARIJUANA DISPENSARIES," TO CHAPTER 4-20, "FEES," B.R.C.1981; AMENDING TITLE 5 BY ADDING CRIMES RELATED TO ANTI-PERSONNEL DEVICES; AND SETTING FORTH RELATED DETAILS.**

City Manager Brautigam provided a brief introduction to the item, followed by a presentation from Charles Ferro of the Planning Department.

1. Ed Withers a resident of Boulder in a mixed use development commented that he was unhappy with a medical marijuana dispensary just 30 feet from his residence. Why would the city prohibit dispensaries near schools but not where the children live. He also raised concern about his ability to sell his home in the future as it is no longer a family friendly development.
2. Bradley Melshenker a local dispensary owner, commented that patients need a clean safe place to try out the medicines in a safe environment. Boulder should be progressive toward patient's rights.
3. Mark Young pooling time with Ann Sicard and Vic Sicard asked council to leave the consumption on site issue up to the individual caregiver. He raised concern about the 500 feet saturation and that it didn't allow businesses a mechanism to grow. Please don't double charge the fees.
4. Ian Barringer who works for a lab that does medical marijuana testing noted that he is currently governed by the Department of Revenue. It may be governed by Boulder's law soon but does not fit into the three categories. Please clarify in the ordinance.
5. Tom Luecke a local dispensary owner, commented that the costs were getting too high and many dispensaries could go out of business. He urged council to postpone any decision until after the state legislation is passed.
6. Martha M. Henze presented a petition with 120 names opposing the dispensary at 695 S. Broadway.
7. Pierre Werner commented that the state regulations would force him out of business. Please withdraw the strictest portion of the ordinance. He also noted that there were no fights or violence at the 4/20 event at CU.
8. Liz Brown noted that many patients rely on small home based caregivers. She expressed that it was a human right to grow her own food and medicine. She felt the 100% renewable energy portion of the ordinance was excessive.
9. Carl Savitz asked council to reconsider the saturation limitations and distinguish between the retailers and the growers.
10. Nick Williams, a private caregiver, asked council to exempt private caregivers from 6-14-3 and allow more than 6 plants without a license.
11. Alex Bowman opposed the statewide ban excluding felons from being able to get a medical marijuana license.
12. Brook Wise pooling time with Janet Sanders and Kelly Moore commented that the black market for marijuana had declined since dispensaries opened. Please hold a third reading to address other outstanding issues. Please distinguish between plants vs. ounces and provide a provision for small caregivers.

13. Andy Mattison pooling time with Chris Woods and Nikki Dugas commented that he had a wholesale license with the state but would have to start over with Boulder. Please provide some assurance that legal businesses have the first right of refusal or grandfather them.
14. Tom Pianko, parent of a CU student, raised concern about the safety of his daughter who lives in Boulder near a dispensary. Even the landlord wants to rescind the lease to the dispensary.
15. Buckie Miner with Full Spectrum Labs commented that there is a good business model out there and the fees need to be kept reasonable.
16. William Giffiths spoke to the pros and cons of the renewable energy provision.
17. Riah McBee, a former licensed caregiver, reminded council that many patients are on disability and limited income. Patients suffer when the cost is too high.
18. Rob Smoke, a medical marijuana dispensary patient but not a dispensary advocate commented that all provisions are bad for the patients. Some will violate the rules anyway.
19. Mina Temby has a daughter who is roommates with Mr. Pianko's daughter also spoke in opposition to the dispensary near their home. She raised concern about a website, [www.hungrybus.com](http://www.hungrybus.com) that offers specials.
20. Matthew Arnold spoke to the need to consider future applicants.

There being no further speakers the public hearing was closed at 9:30 p.m.

Council Member Gray moved, seconded by Morzel to adopt Ordinance No. 7716 amending Title 6 by the addition of a new chapter 6-14, "Medical Marijuana," B.R.C. 1981; terminating interim regulations adopted by Ordinance No. 7707; adding a new section 4-20-64, "Medical Marijuana Dispensaries," to Chapter 4-20, "Fees," B.R.C.1981; amending Title 5 by adding crimes related to anti-personnel devices; and setting forth related details. The motion included the errata sheet amending page 37, line 17 – page 38, line 2 to substitute the following:

Section 2. Chapter 4-20 "Fees," B.R.C. 1981 is amended by the addition of a new section 4-2064, to read:

**4-20-64 Medical Marijuana Businesses.**

Application and license fees for medical marijuana businesses shall be up to the following amounts:

(a) Application fee	\$3,000.00
(b) Criminal background check fee, per year	Actual Costs
(c) License fee, per year	\$23,000.00
(d) Renewal application fee, per year	\$21,000.00
(e) Renewal license fee, per year	\$1,000.00

The actual amount of the application and license fees shall be set by the City Manager up to the maximums provided above based on the anticipated direct and indirect costs to the City of preparing to issue licenses, processing applications, and monitoring compliance of medical marijuana business. The application fee and costs paid are non-refundable. The license fee may be refunded if the license application is denied. Neither the application fee nor the license/renewal fee will be refunded in the instance of revocation.

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Council Member Becker moved, seconded by Wilson to remove the underline on page 30, lines 15-17. The following sentence in section (f) deleted:

“Provided however, deliver of medical marijuana from the licensed premises to a patient may be permitted in the event a patient has an emergency need for medical marijuana prior to 7 a.m. of the following day. In such case, the delivery shall be no more medical marijuana than is required to meet the need of the patient to address the emergency.”

The motion carried unanimously 9:0. 10:04 p.m.

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Council Member Ageton moved, seconded by Cowles to delete Sections 3 and 4 of the ordinance on page 38 of the memo and introduce and order published by title only a new Ordinance No. 7723 as presented in the green supplemental handout provided by the City Attorney, amending Title 5 “General Offenses,” B.R.C. 1981 by adding crimes related to anti-personnel devices, and setting forth related details. The motion carried unanimously 9:0; 10:05 p.m.

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Council Member Cowles moved, seconded by Becker to amend section (i) by deleting “or Offset” in the subject and removing “...Certified Renewable Energy Credits (“RECs”) or carbon offsets. For purposes of this section RECs or offsets means independently certified carbon credits established through programs such as Green E.

Council Member Appelbaum offered a friendly amendment to eliminate Green E and the Colorado Carbon Fund on line 26 of page 30. The friendly amendment was accepted.

Council Member Gray offered a friendly amendment to amend line 26 to read “...Community Solar Garden or renewable energy generated on site. The friendly amendment was accepted.

The new section (i) now reads:

Renewable Energy Usage Required. Every medical marijuana business that grows medical marijuana on premise shall directly offset 100% of its electricity consumption through the purchase of renewable energy in the form of Windsorce, a verified subscription in a Community Solar Garden or renewable energy generated on site, or an equivalent that is subject to approval by the city.

The motion carried unanimously 9:0. 10:10 p.m.

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Council Member Appelbaum moved, seconded by Morzel to amend Section (a) subsection (2) on page 21 of the memo by deleting “is located as allowed in Ordinance No. 7707” and inserting “was established as a greenhouse/nursery use and prior to “commenced operation..” The motion carried unanimously 9:0; 10:15 p.m.

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Council Member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 10:35 p.m. The motion carried unanimously 9:0. 10:35 p.m.

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Council Member Cowles moved, seconded by Becker to incorporate the yellow supplemental handout provided by the City Attorney amending page 32, line 18 of “Records of Sources of Medical Marijuana” by adding a new subsection (e) to 6-14-9:

6-14-9 Right of Entry – Records To Be Maintained.

(e) Reporting of Source, Quantity and Sales. The records to be maintained by each licensee shall include the source and quantity of any marijuana distributed, produced or possessed upon the licensed premises. Such reports shall include without limitation for both acquisitions from wholesalers and transactions to patients or caregivers the following:

1. Name and address of seller or purchaser;
2. Date, weight, type of marijuana and dollar amount or other consideration of transaction; and
3. For wholesale transactions, the Colorado, and city if any, sales and use tax license number of the seller.

And deleting Section 6-14-12(b) on page 34, lines 6-8 as shown on the yellow handout provided by the City Attorney.

The motion carried unanimously 9:0, 10:48 p.m.

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Council Member Cowles moved, seconded by Wilson to incorporate the blue supplemental handout provided by the City Attorney amending page 32, line 18 by adding a new Subsection (e) to 6-14-9:

6-14-9 Right of Entry – Records To Be Maintained.

(e) Reporting of Energy Use and Renewable Energy Credit (REC) Purchases. The records to be maintained by each licensee that grows medical marijuana shall include without limitation records showing on a monthly basis the use and source of energy and the number of certified Renewable Energy Credits (RECs) purchased, or the subscription level for another renewable energy acquisition program approved by the city manager. Such records shall include all statements, reports or receipts to verify the items included in the report of the licensee. By acceptance of the medical marijuana business license from the city, the licensee grants permission to providers of the energy or point of origin of the RECs or other renewable energy acquisition program to disclose the records of the licensee to the city.

The motion carried unanimously 9:0. 10:50 p.m.

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Council Member Cowles moved, seconded by Morzel to amend page 28, line 21 by adding “except that this limitation shall not apply in Industrial Zones.” The motion carried 8:1, Osborne opposed. 10:57 p.m.

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Council Member Ageton moved, seconded by Morzel to suspend the rules and continue the meeting at 11:00 p.m. The motion carried 7:2; Cowles and Karakehian opposed.

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Council Member Gray moved, seconded by Morzel to amend page 28, lines 14 and 16 in section (e) subsection (1) inserting “and for personal service uses, within 500’ of a City Parks and Recreation park or center, excluding the Boulder Creek Path, Pearl Street Mall and Flatirons Golf Course.” The motion failed 3:6; Gray, Morzel and Osborne in favor. 11:06 p.m.

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Council Member Wilson moved, seconded by Becker to strike the last sentence in (e) (1) on page 28 of the memo that reads “This restriction shall not apply to any applicant who applied for a business license for a medical marijuana business prior to November 5, 2009, such license was approved and the business has continuously operated such business since December 1, 2009. The motion failed 4:5; Ageton, Appelbaum, Cowles, Karakehian and Morzel opposed. 11:16 p.m.

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Vote was taken on the main motion to adopt Ordinance No. 7716 amending Title 6 by the addition of a new chapter 6-14, “**Medical Marijuana**,” B.R.C. 1981; **terminating interim regulations** adopted by Ordinance No. 7707; **adding a new section 4-20-64, “Medical Marijuana Dispensaries**,” to Chapter 4-20, “Fees,” B.R.C.1981; amending Title 5 by adding crimes related to anti-personnel devices; and setting forth related details. The motion included the errata sheet amending page 37, line 17 and page 38, line 2 as listed above. The motion carried unanimously 9:0. 11:19 p.m.

Public Participation was re-opened at 11:20 p.m.

- 1. William Griffiths commented that Council should take more breaks. He noted that the City had more power than Xcel.

Public participation was closed.

- 6. **MATTERS FROM THE CITY MANAGER:** - None.
- 7. **MATTERS FROM THE CITY ATTORNEY:** - None.
- 8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**
  - A. **DISCUSSION REGARDING THE BOULDER URBAN RENEWAL AUTHORITY BOARD APPOINTMENT.**

Mayor Osborne appointed Council Member Becker to the Boulder Urban Renewal Authority Board.

Council ratified the appointment unanimously 9:0. 11:24 p.m.

**OTHER MATTERS:**

Council Member Morzel commented that there would be a regional group associated with the Beyond the Fences movement that would be moving forward as a group to try and purchase the Section 16 property. Council indicated support of this action.

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Mayor Osborne then noted that there were two additional items for council discussion: the first related to the recent Arizona State Legislation on immigration and the second regarding the Crestview East annexation.

Several Council Members expressed a desire to take action to voice its opposition to the Arizona legislation. It was determined that the appropriate first step would be to refer the issue to the Human Relations Committee for research and recommendations. Council Member Becker asked if there wasn't something that could be done sooner that would make a statement. City Manager Brautigam announced that she would be notifying all Department Heads that travel to Arizona by City staff would be prohibited immediately. There was a Council nod of 5 to refer the Arizona immigration issue to the HRC and return to Council with further recommendations.

There was a motion to revisit the Crestview East annexation issues related to sidewalks and trees. The motion failed 3:6; Gray, Cowles and Morzel in favor.

The project would move forward as designed with sidewalks compliant with city standards.

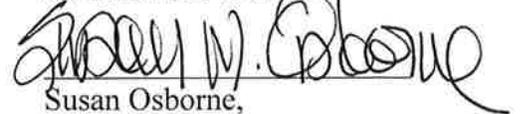
9. **PUBLIC COMMENT ON MATTERS:** None.

10. **FINAL DECISIONS ON MATTERS:** None.

11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 11:50 P.M.

APPROVED BY:



Susan Osborne,

Mayor

ATTEST:



Alisa D. Lewis, City Clerk